



# **COMMONWEALTH of VIRGINIA**

## *Department for the Aging*

Linda L. Nablo, Commissioner

### **VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD MEETING (VPGCAB)**

**September 20, 2007, 10:00 AM**

### **MEETING MINUTES**

#### **Members Present**

Paul Aravich, PhD, Chairman, Kirby Fleming, Judith Koziol, Nancy Mercer, Alisa Moore, Gail Nardi, Mary Payne, John Powell, Janis Selbo, Cynthia Smith, Dana Traynham, Erica Wood, Lawrence Zippin

#### **Members Absent**

Aundria Foster, Kathy Pryor

#### **Ex Officio Member**

Theresa Drought, PhD, University of Virginia School of Nursing

#### **Guest**

Autumn Benson, Jewish Family Services  
Carter Harrison, Alzheimer's Association  
Beth Martin, Commonwealth Catholic Charities  
Beth Skufca, Senior Connections, The Capital Area Agency on Aging  
Ted Susac, Jewish Family Services - Richmond  
Josie Williams, Commonwealth Catholic Charities

#### **VDA Staff**

Faye Cates, Janet James, Jackie Taggart

#### **Meeting Called to Order**

Paul Aravich, Chairman to the VPGAB called the meeting to order at 10:15 a.m. Everyone was welcomed and introductions were made.

1610 Forest Avenue, Suite 100, Richmond, Virginia 23229

Toll-Free: 1-800-552-3402 (Voice/TTY) • Phone: 804-662-9333 • Fax: 804-662-9354

E-mail: [aging@vda.virginia.gov](mailto:aging@vda.virginia.gov) • Web Site: [www.vda.virginia.gov](http://www.vda.virginia.gov)



He asked the VPGCAB members, as a policy and courtesy, to use acronyms as little as possible.

The minutes of the June 28, 2007 VPGCAB meeting were approved and accepted with the following correction:

- *page 2 – John Powell and Cynthia Smith are members of the Executive Committee.*

Faye emphasized the importance of Board members signing in for each meeting. At the end of the year, a report of VPGCAB members' attendance is submitted to the Governor's office.

### **Virginia Tech Report**

A two page overview of the Virginia Tech Report "*The Need for Public Guardians in the Commonwealth of Virginia*" was distributed. Janet James provided feedback on the findings and an explanation as to why the report was prepared. A copy of the full report will be posted on the Virginia Department for the Aging (VDA) website, [www.vda.virginia.gov](http://www.vda.virginia.gov). Ms. James reminded members that the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) funding related to client count was not included in the report's statistics because the data reflected in the report predates the 2006 DMHMRSAS/VDA agreement to serve persons diagnosed with mental retardation. She also cited some of the responses from agencies as to what happen to clients who have an unmet need for guardian services.

There was a **motion** to have the Chairman draft a letter from the VPGCAB formally thanking Virginia Tech for their services. It was seconded.  
Motion passed.

Ms. James reported that the issue of the public guardian program's 1:20 staff/client ratio was not part of the Virginia Tech Report. Erica Wood gave an overview of the 1:20 ratio for the public guardianship programs. A major concern of the Board is that this ratio remains unchanged; because if the ratio increases the program might suffer. Recommendations from the report are as follows:

1. Fund individual programs to meet needs of the 1,441 individuals who are currently in need of guardianship/conservatorship services.
2. Enhance funding steadily so that the individual programs can serve the projected increase in clients.
3. Increase funding so that the public guardianship programs have statewide coverage.

4. Create mechanisms in jurisdictions so that court costs for indigent clients can be waived or substantially reduced.
5. Identify ways to cover the cost of the petitioning process for families who are willing to assume guardianship of indigent family members and are appropriate.
6. Encourage agencies to keep a referral or waiting list as a means of starting to more systematically documenting the need for public guardianship/conservatorship services.

The VPGCAB members discussed in what manner the report's recommendations should be handled. Ms. James indicated that the new VDA Commissioner, Linda Nablo, had not reviewed the report yet, and suggested that any action be tabled until the December 2007 Board meeting.

There was a **motion** by Gail Nardi to accept the recommendations in the report. The motion was seconded by John Powell. Motion passed.

There was discussion of VDA pursuing funding via the 2008 General Assembly to implement a phased-in approach to serving some on the 1,441 individuals identified in the Virginia Tech Report as needing guardianship/conservatorship services.

There was **motion** by Ms. Nardi to have VDA prepare a budget request package to be submitted to the Secretary of Health and Human Resources, the Governor and the 2008 General Assembly to fund a phased-in increase in the number of public guardianship slots available to the programs in areas of greatest need. John Powell seconded and the Board unanimously agreed.

#### **Update: Proposed Revision to Guardian/Conservator Regulations**

A copy of the proposed revised regulations from the Virginia Register was provided to each Board member.<sup>1</sup> Ms. James and Mary Payne provided background information and overview of the process it has taken to get the regulations to this point. There were 8 issues VDA had to address per the Governor's office review of the proposed regulations. Ms. James noted that she feels VDA can move forward, and to amend the regulations now would further delay getting them promulgated. Other issues can be addressed via provider contract and policy. Ms. Nardi noted that regulations are reviewed for amendment every three years, so there will be opportunity to revisit issues of concern.

VPGCAB members discussed previous drafts compared to the present regulations. Erica Wood provided the members with a copy of a letter that was previously drafted to

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<sup>1</sup> Virginia Register of Regulations, Volume 24 Issue 1, September 17, 2007, p. 30 – 36.

Governor Kaine written with comments on the regulations, which were to be provided during the 60 day public comment period. Dr. Aravich suggested that each Board member read the revised regulations and submit any comments to Erica Wood to include as public comments from the Board. The Executive Committee will finalize the comments for presentation and approval from the VPGCAB by conference call.

Ms. Cates will check the Commissioner Nablo's calendar and schedule a meeting in early November for the Executive Committee to discuss the Board's concerns about the proposed revised regulations.

Ms. Nardi moved and John Powell seconded that the Chairman of the VPGCAB write a letter to Commissioner Nablo and copy Janet James commending her and VDA staff on the drafting of the regulations. **Motion** passed.

### **Financial Report**

Ms. Cates distributed a copy of a financial report reflecting Board expenditures to-date, and she explained the use of the \$5,000 appropriated for the Board. She further noted that VDA would utilize any remaining funds not utilized by the Board.

### **Update on Board Nominees**

Ms. Cates shared the most recent list of appointees to the VPGCAB by Governor Timothy Kaine. The Board is at its 15 member quota. However, the Board can still solicit new members since some of the present member's terms will end June 30, 2008. For appointment, there is an application on the Governor's website. Ms. Cates will provide the website address to Board members.

## **Standing Committee Reports**

### **Planning and Development Committee**

#### **Strategic Planning**

Janis Selbo, Committee Chairman, reported that the committee has been working on the draft policy guidelines developed by former Board Chairman, Christina Delzingaro, focus being to make the guidelines conform to the proposed revised regulations. Major issues still outstanding are 1) the role of the multidisciplinary panel (MDP); 2) placement of statutory reference in the document; and later, 3) placement of regulatory references as appropriate. Dana Traynham reviewed the statutes for the committee. It was noted that the guidelines will serve as an advisory document for VDA who is responsible for setting policy for local programs.

### **Health Care and Medical Decision Making Authority of Public Guardians**

Committee Chairman Dr. Aravich reported that the committee met just before the full Board meeting today to discuss future endeavors. Dr. Theresa Drought will draft a

concept proposal for training the MDPs. Hopefully once the training modules are developed the training can be expanded to others, including judges. The committee will further explore the composition of the MDP and working with the local guardian provider network, identify resource persons with expertise in mental retardation and mental health.

The MDP is an advisory group to each of the local guardian/conservator programs who reviews cases referred to determine if they are appropriate for guardian services. The outcome of a February 2006 provider survey revealed the need to include more bioethics professionals on the MDPs. The committee discussed the growing number of people with mental retardation entering into the public guardianship program and the need to have MDP members who are familiar with mental health/retardation issues. The committee discussed a number of issues related to clients with challenging behaviors who are a threat to self, caregiver or community.

Dr. Aravich advised new board members to notify Ms. Cates of a committee they would like to serve on.

#### **OTHER BUSINESS**

Ms. Nardi enlightened the Board on some issues facing the General Assembly. She informed the Board that Secretary of Health and Human Resources, Marilyn Tavenner had implemented two initiatives that will have impact on guardianship.

- The Systems Transformation Grant: A five year federally funded grant that is designed to transform individuals who have mental and/or physical challenges, the focus being "person-centered" planning. This effort is to transform service delivery systems in government so that more incapacitated persons can remain in the community, opposed to being institutionalized.
- Money Follows The Person Initiative: Over the next four years this project calls for Virginia to transition 1,041 persons out of institutional settings and into their own residences where support will be in place for them to manage their own money. Featured will be up to five (5) options for support services. There is maintenance of effort requirement, which, if not met, could jeopardize Medicaid funding. This will impact guardianship as some of these clients will need a guardian, e.g., those who cannot communicate their needs, etc. This will also impact the aging service delivery system.

The General Assembly mandated a feasibility study this year on transferring adult protective services, assisted living facility licensure and long-term care services from the Department of Social Services to the Virginia Department for the Aging. Ms. Nardi

stated that whatever form the transfer occurs, its board will have to be a regulatory board. The VPGCAB discussed at length Medicaid waiver slots.

#### **PUBLIC COMMENT**

Carter Harrison, Alzheimer's Association, informed the Board that due to the state budget deficit, this is not a favorable time to seek additional funding for public programs, and he expects more cuts across the board. The Chair noted the valuable contribution Mr. Harrison has made to Board deliberations.

Beth Skufca, Program Coordinator, Senior Connections - The Capital Area Agency on Aging Public Guardian Program, strongly expressed her concerns about the Department of Social Services (DSS) \$5 filing fee charged to the client. Once a guardian qualifies, the fee is provided to DSS who tracks case activity via an annual client status report submitted by the provider agency. The fee is a statutory requirement. Application of the fee is not universally applied by all DSSs.

John Powell provided background information on the origin of the \$5 filing fee to DSS. The Board held a lengthy discussion on the possibility of presenting a proposal to DSS to waive the fee. John Powell was asked generate draft statutory language that would increase and decrease the money, to be shared with the Executive Committee. Initially, the fee was determined to be administrative cost – all which occurred prior to there being public guardian programs.

One approach would be to wave the fee for those persons the court deem incapacitated and indigent. Mr. Powell noted the eliminating the \$25 annual fee to the Commissioner of Accounts for those guardians who also serve as conservators is unlikely, since these commissions are private enterprises and have staff to pay.

#### **Agenda Items for December Board Meeting:**

- Discussion of the 2007 Annual Public Guardian Program Report to the General Assembly.
- Virginia Tech Study Recommendations
- Comments Received on the Revised Proposed Regulations
- Report on Proposed 2008 Legislation (Carter Harrison)
- Update on Systems Transformation Grant Initiatives (Gail Nardi will find a speaker)
- Update on Money Follows The Person Initiative (Cynthia Smith)

At the October 19, 2007, legislative platform meeting, Gail Nardi and Janis Selbo will attend and represent the VPGCAB.

Virginia Public Guardian and Conservator Advisory Board Meeting

September 20, 2007

Page 7 of 7

**Next Meeting Date for VPGCAB**

December 6, 2007

**Adjournment**

There being no further business, the meeting adjourned at 2:00 p.m.

*Erica F. Wood.*

*Erica Wood, Secretary*

*3/27/08*  
*Date*